

**REMARKS**

The Office Action dated March 24, 2010 has been received and reviewed. This - response, submitted along with a Petition for a One-Month Extension of Time, is directed to that action.

Claims 1 and 6-8 have been amended to correct certain formal issues. Support for the amendment to claim 6 can be found in the specification on page 5, lines 4-6 and 10-13. No new matter has been added.

The applicants respectfully request reconsideration in view of the foregoing amendments and the following remarks.

**Claim Rejections- 35 U.S.C. §112**

The Examiner rejected claims 1-3 and 5-14 under 35 U.S.C. §112, second paragraph as indefinite. The Examiner noted that claim 1 failed to recite proper antecedent basis for the term "the black tea manufacturing process" and "the fermented material"; "the sprayer" in claim 7, and "the drier" in claim 8. The applicants have amended claim 1 herein to correct these issues.

Furthermore, the Examiner stated that the terms "packing suitably" in claim 1 and "any suitable drier" in claim 8 were indefinite. The applicants have cancelled these terms from the claims, thus obviating the rejection.

Finally, the Examiner rejected claim 6 because the weight percent of antioxidant recited does not indicate what the amount is based on. The applicants have amended claim 6 so that the amount of antioxidant is based on the weight of the unfermented tea. Examples 1 and 2 of the specification support this amendment. Accordingly, the

applicants submit that this rejection is rendered moot by the amendment herein.

Claim Rejections- 35 U.S.C. §103

The Examiner rejected claims 1-3 and 5-14 under 35 U.S.C. §103(a) as obvious over Ganesan (US 2001/0033880 A1) in view of Ravichandran (Food Chemistry, 2000), Furia (CRC Handbook of Food Additives, 1980) and Janssen (US 2004/01115318 A1). The applicants respectfully traverse these rejections.

The applicants respectfully submit that a *prima facie* case of obviousness cannot be established because a person of ordinary skill in the art would not be motivated to modify the cited prior art references to achieve the present invention. More particularly, a skilled artisan would not modify Ganesan in view of the secondary references to achieve the presently claimed invention because doing so would render Ganesan unsuitable for its intended use. Indeed, if a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Ganesan is directed to a process for manufacturing a cold water soluble black tea. In his process, Ganesan treats unfermented tea with a solubilizing compound such as ascorbic acid, which modifies the black tea in order to enhance the solubility of the tea in cold water. Importantly, Ganesan treats the tea with ascorbic acid during the initial stages of fermentation in order to improve the solubility. (See paragraphs [0031] to [0035]; [0036] to [0040]; [0041 to 0045]; [0046] to [0050]. Contrarily, the presently claimed process sprays the synthetic antioxidant emulsion *after fermentation* for the

prevention of pacha taint in CTC teas. In order to achieve the present invention, a skilled artisan would have to modify Ganesan to treat the tea with antioxidant *after* fermentation. This modification would alter the solubility characteristics of the tea such that Ganesan's process would be unsuitable for its intended use, since Ganesan needs to treat the tea *before* it has completely fermented in order to achieve the desired solubility. Furthermore, a skilled artisan would not have substituted Ganesan's ascorbic acid with a synthetic antioxidant because a synthetic antioxidant is not a solubilizing agent, and substituting the synthetic antioxidant would render Ganesan unsuitable for its intended purpose.

The applicants also note that none of Ravichandran, Furia or Janssen remedy the deficiencies of Ganesan, described herein. Ravichandran involves the lipid occurrence, distribution and degradation to flavor volatiles during tea processing at different stages of selected clones. There is no analysis of CTC teas prone to pacha taint or CTC teas containing pacha taint. Furia does not even mention tea, and any suggestion that Furia's "low-fat" or low-lipid food product extends to black tea is without basis. Furia describes "low-fat content" foods as encompassing "breakfast cereals, dehydrated potatoes and some cake mixes" as exemplary. (See Furia, page 208). A skilled artisan would not readily consider Furia's teachings to extend to tea.

Based on the foregoing, the applicants respectfully submit that a *prima facie* case of obviousness cannot be established, and respectfully request that the Examiner withdraw these rejections.

The applicants submit that the presently claimed invention is in condition for allowance, and such favorable action is respectfully requested. If any issues remain, the

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resolution of which may be advanced through a telephone conference, the Examiner is invited to contact the applicant's attorney at the number listed below.

**CONDITIONAL PETITION FOR EXTENSION OF TIME**

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully requests that this be considered a petition therefore. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

**ADDITIONAL FEE**

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,

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